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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant	:	Jonathan Leblang
App. No	:	10/748,745
Filed	:	December 30, 2003
For	:	COMPUTER CONTROLLED ARTICLE CLASSIFICATION AND PROCESSING SYSTEM
Examiner	:	Tonya S. Joseph
Art Unit	:	3628

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

Enclosed with this Request is a Notice of Appeal.

REASONS FOR REQUEST

Review of the above-identified application is requested for the following reasons:

All of the pending independent claims stand rejected as anticipated under 35 U.S.C. § 102(b) by U.S. Patent Publication No. 2002/0077929 ("Knorr"). Applicant respectfully submits that the rejection is improper because, among other reasons, Knorr does not explicitly or inherently disclose at least the following elements of independent Claims 1 and 50:

> **Claim 1:** "a second module that, based at least in part on information retrieved from the database, identifies at least a first article that can be added to the pending order within a first amount of time without delaying the shipment date of the pending order; and
>
> a third module that causes a notification to be presented to the user, wherein the notification indicates that the user can add at least the first article to the pending order without delaying the pending order shipment;"
>
> **Claim 50:** "based at least in part on information retrieved from a database that stores article identification information and article location information for a plurality of articles, identifying a first article that can be added to the pending order without delaying the shipment date of the pending order; and
>
> providing a notification for the user that indicates that the user can add the first article to the pending order without delaying the pending order shipment date."

As a preliminary matter, Applicant submits that, with respect to Claim 1, the above-quoted elements are properly construed to mean that, with respect to a shipment date for a pending user order, a second module identifies an article that can be added to the pending order within a first amount of time without delaying the shipment date of the pending order, and a third module causes a notification to be presented to the user indicating that the article can be added to the pending order without causing a shipping delay.

Similarly, with respect to Claim 50, the above-quoted elements are properly construed to mean that, with respect to a shipment date for a pending user order, article identification information and article location information is used to identify an article that can be added to the pending order without delaying the shipment date of the pending order, and a notification is provided to the user indicating that the article can be added to the pending order without causing a shipping delay. Applicant's arguments, however, do not rely on the foregoing constructions.

The only portion of Knorr that involves suggesting items to a user with respect to a pending order is in paragraph 65:

> "As indicated in the electronic vendor path at 546, the vendor can use the time between the electronic hold and the ultimate order execution to plan inventory and interact with the purchaser for suggestive sellings, i.e., up-selling and or cross-selling."

Nothing in this or any other portion of Knorr suggests identifying articles that could be added to a pending order without delaying shipment of the pending order. Indeed, Knorr is completely silent regarding determining the possible effect on a shipping date with respect to suggesting adding an article to a pending order. Further, nothing in this or any other portion of Knorr suggests that a notification is provided for the user that indicates that the user can add an article to a pending order without delaying the pending order shipment date.

In addition, with respect to Claim 50, Knorr is completely silent with respect to using article location information to identify an article that can be added to a pending order without delaying the shipment date of the pending order.

In connection with the above-quoted elements of Claims 1 and 50, the Final Office Action relies on paragraph 65 of Knorr, and in particular, the citation provided above. However, as noted, the citation makes no mention regarding determining the possible effect on a shipping date with respect to identifying an article for addition to a pending order.

The Final Office Action further alleges that because Knorr makes no mention of halting or delaying shipping as a result of the addition of suggested items, one can reason that "Knorr tries to cross-sell a customer before the order is shipped further supports the Final Office Action's conclusion that the addition of items is 'without delaying the shipment date of the pending order.'" However, merely because Knorr fails to discuss whether adding a suggested item to a pending order will alter a shipping date does not mean that Knorr discloses identifying an article that can be added to a pending order without delaying the pending order shipment date.

Indeed, Knorr's failure to even discuss determining whether adding a suggested item to a pending order will alter a shipping date is further evidence that Knorr is not concerned with identifying articles that could be added to a pending order without delaying shipment of the

pending order or with providing a user notification that indicates that the user can add an identified article to a pending order without delaying the pending order shipment date.

To the extent that the Final Office Action may be alleging that it is inherent in Knorr's disclosure of a vendor being able to use the time between the electronic hold and the ultimate order execution to interact with the purchaser for suggestive sellings that the system of Knorr identifies a first article that can be added to the pending order without delaying the shipment date of the pending order, Applicant traverses such allegation. The system of Knorr could, for example, suggest an article prior to a pending order execution date whose addition to a pending order would affect the pending order shipping date.

Further, even assuming that the Final Office Action's allegation that:

> Knorr teaches that a vendor can use the time between the electronic hold and the ultimate order execution-(shipment of the items) to plan inventory and interact with the purchaser for up-sellings or cross-selling (see para. 65). This interaction alone, is an indication that the user can add the first article to the pending order"

is accurate (which allegation Applicant specifically denies), Knorr still fails to disclose a notification is provided for the user that indicates that the user can add an article to a pending order without delaying the pending order shipment date.

Applicant further notes that, with respect to Claim 50, the Final Office Action fails to even discuss the elements directed to using article location information to identify an article that can be added to a pending order without delaying the shipment date of the pending order.

Conclusion

For at least the foregoing reasons, Applicants respectfully submit that the rejections of independent Claims 1 and 50 are improper, and request that these rejections be withdrawn. In addition, Applicant believes that the various dependent claims are patentable for similar reasons (where applicable), and because of the different features recited therein.

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: *May 20, 2009*

By: *David Weiss*

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